19/12/07

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 797/05 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT Jahel Singh, aged about 45 years, Kanhai Gond, Occupation- Hamali, R/o village Koliyari, Pandaridabri, P.S. Sihava, Distt. Dhamtari (CG)

VERSUS

RESPONDENT The State of Chhattisgarh, through Police Station Sihava, Distt. Dhamtari (CG)

14-12-2007

Shri D.N. Prajapati, Advocate for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

2. This criminal appeal is directed against the judgment of conviction and order of sentence dated 22nd September, 2005 passed in S.T. No. 269/2004 whereby learned Additional Sessions Judge, Dhamtari has convicted the appellant under Section 307 of I.P.C. and sentenced to undergo R.I. for 7 years with fine of Rs. 200/- and in default of payment of fine, to undergo additional R.I. for one month.

3. Case of the prosecution, in brief, is that on 17-5-2004 at about 10.00 pm, appellant Jahel Singh went to the house of Dhaniram (P.W. 1) situated at Kanidabri colliery and started quarreling. When Somar Singh, brother-in-law of Dhaniram came out, the appellant fired at him and caused bullet injuries on his chest as a result of which, he fell down. Somar Singh (P.W. 2) was first taken to Dhamtari Hospital for treatment and from there he was referred to

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आदेश पत्रक (पूर्वानुबद्ध)

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Medical College Hospital, Raipur. Report of the incident was lodged on 18-5-2004 at about 11.30 by Dhaniram Dhruva. During investigation, on the memorandum of the appellant, one single barrel Bharmar gun was taken into possession vide Ex. P-4. The victim was sent for medical examination to Christian Hospital, Dhamtari and the report of the Christian Hospital is Ex. P-12. The accused was also sent for medical examination to Government Hospital, Nagri vide Ex. P-9 and his Medico Legal examination report given by Dr. D.R. Thakur is Ex. P-11. The Christian Hospital, Dhamtari referred the victim to Medical College Hospital, Raipur. Discharge ticket of Somar Singh of Christian Hospital, Dhamtari is Ex. P-12. Treatment papers of Somar Singh (P.W. 2) of Medical College, Raipur are Ex. P-14.

After completing the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Dhamtari and the same was received on transfer by the learned Additional Sessions Judge for trial.

During trial, the prosecution examined 14 witnesses in all. Thereafter statement of the accused was recorded in which he denied the evidence appearing against him in the prosecution case and pleaded innocence and false implication. The trial Court convicted and sentenced the appellant as mentioned in para 1 of the judgment.

Learned counsel for the appellant submits that conviction of the appellant is based on the statement of victim Somar Singh (P.W.

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2) and his brother-in-law Dhaniram (P.W.1). From perusal of the statement of the victim Somar Singh, it would be evident that the appellant fired at him 4 times however only two pallets were taken out from his body. He has given contradictory statement that in the examination-in-chief, he has stated that the appellant said that he will kill him and in the cross-examination, he has stated that the accused never said before the date of incident that he will kill him. He has made material improvement in his deposition. He further agued that Dhamiram (P.W. 1) was not eye-witness of the incident as he himself has admitted in para 5 of his deposition that he did not see the person who fired and even he did not see him while he was fleeing. Other eye-witnesses namely Balaram (P.W. 6A) and Laxmichand (P.W. 7) who have been examined as eye-witnesses of the incident, have not supported the case of the prosecution. Both of them have not stated that they saw the appellant firing at Somar Singh. Memorandum and recovery at the instance of the appellant of the weapon have not been established as the witnesses of memorandum and seizure P.W. 3 Chhannu, P.W. 4 Pusau, and P.W. 5 Motilal have not supported the case of the prosecution. Lastly, it was argued that P.W. 13 Dr. Roshan Upadhyay who examined Somar Singh on 18-5-2004 and gave his report of Ex. P-12 has not given any definite opinion about the nature of the injury and the weapon of offence by which the injury was caused. Similarly, Dr. Ashok Kumar Sanyal (P.W. 14) in para 4 has admitted that from perusal of the

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documents of Ex. P-13 and Ex. 14 and Ex. P-15, it appears that the condition of the patient was normal and injury sustained by him was simple.

On the other hand, learned counsel for the State has supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the record as also the impugned judgment.

Dr. Ashok Kumar Sanyal (P.W. 14), General Surgeon of Medical College Hospital, Raipur has treated and performed surgical operation on Somar Singh who was admitted in his hospital on 18-5-2004 and was discharged on 3th June, 2004 vide Discharge Ticket of Ex. P-16. This witness has stated that Somar Singh has sustained gun shot injury in his left chest and bullet was taken out from his left arm. On 27-5-2004 another bullet was retrieved from back portion of chest of Somar Singh. He has admitted in the cross-examination that the condition of the patient was normal and injuries were simple. He has also admitted that he is not gun shot specialist and therefore, he is not in a position to distinguish between pallet and bullet and he was not present at the time of operation therefore, he cannot opine that the injury was caused from front or back. He has also admitted that in the report, it is nowhere mentioned that in the absence of primary treatment, the patient could die. He has also expressed his inability to state as to from what distance, fire was shot at him.

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आदेश पत्रक (पूर्वानुबद्ध)

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P.W. 13 Dr. Roshan Upadhyay is Surgeon of Christian Hospital, Dhamtari. He examined Somar Singh on 18-5-2004 and found two injuries on the left front side of the chest and two injuries on the back portion of size 1 x 1 cm. The Injuries on both sides were of same size. There were 4 marks of injuries on the front side and two marks on back side. After primary treatment, he referred the patient to Medical College Hospital, Raipur and his report is Ex. P-12. He has stated in the cross-examination that he cannot opine as to by what weapon the injury was caused.

Thus from the statement of victim Somar Singh (P.W. 2) and the statement of Dr. Ashok Kumar Sanyal (P.W. 14), it is evident that Somar Singh sustained gun short injuries and two pallets/bullets were retrieved from his left arm. Looking to the weapon of offence and the vital part of chest on which the injured sustained gun shot injuries, intention of the appellant of causing death of the injured Somar Singh has been rightly inferred.

From the perusal of the statement of Somar Singh (P.W. 2), it is evident that he had gone to the house of his brother-in-law as guest. He had no any previous enmity with the appellant whereas the quarrel was, in fact, between Dhaniram and the accused and the injured tried to intervene in the above quarrel and accused fired at him 4 times and two bullets struck on his chest. There are corresponding injuries on the back of the victim also. There is no

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evidence that Somar Singh was falsely implicating the applicant on account of any previous animosity as the victim has categorically stated that there was no enmity with appellant and he has also admitted in his cross-examination that before the date of incident the appellant never threatened him with his life. Though the defence has suggested in the cross-examination that the allegation that he threatened him of his life is not present in his diary statement, however the witness has not been confronted with the diary statement. The defence could not impeach the credibility of this witness by his cross-examination and he has stuck to his statement given in the examination-in-chief.

P.W. 1 Dhaniram has also stated that on the date of incident, five guests were present in his house including Somar singh. At about 10 in the night, the appellant came to his house and picked up quarrel with him. However he persuaded him to leave the place at that occasion. Thirty minutes thereafter, the appellant again came in the lane and called him whereupon Somar Singh went out and tried to pacify him but he fired at him which struck on his left chest as a result of which she fell on the ground. From the cross-examination of this witness, it is true that he is not the witness of incident as by the time he reached outside his house, the appellant had already left the place.

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P.W. 6A Balaram is also a witness of this fact that the quarrel took place between Dhaniram and the accused between10 to 10.30 pm and thereafter they heard the sound of gun fire in the night and saw that Somar Singh had sustained gun shot injury. Similar is the statement of Laxmichand. The evidence of Somar Singh that the appellant fired at him with his gun and he sustained bullet injury on his left portion of his chest is also corroborated from medical evidence. The circumstances in which, the offence took place has been established from the statement of Dhaniram and other witnesses Laxmichand (P.W. 7) and Balaram (P.W. 6A).

On the basis of aforesaid analysis, this Court is of the considered opinion that the prosecution has been able to establish involvement of the appellant in the aforesaid crime beyond all reasonable doubt. The trial Court has not committed any illegality by recording the finding of conviction.

The appeal of the appellant is without any substance and the same deserves to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

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